

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2594 of 1998

to

FIRST APPEAL No 2694 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

MANILAL DHULABHAI PATEL

Appearance:

In F.A.No.2594 of 98 to 2613 of 1998
Mr. P.G.Desai, Government Pleader for
the State.

In F.A.No.2614 of 1998 to 2653 of 1998
Mr. Maulin R.Raval, A.G.P. for the State.

F.A. No.2654 of 1998 to 2694 of 1998
Mr.H.L.Jani, A.G.P. for the State

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 01/03/99

ORAL JUDGEMENT (Per:Panchal.J)

All these appeals which are filed under section 54 of the Land Acquisition Act 1894 (hereinafter referred to as the said Act) read with section 96 of the Civil Procedure Code 1908 are directed against the common judgment and award dated September 10, 1997 rendered by the learned Assistant Judge, Sabarkantha at Himatnagar in L.A. Reference Cases Nos. 2830/89 to 2833/89, 2835/89 to 2844/89, 2850/89 to 2856/89 to 2888/89, 2892/89 to 2894/89, 2896/89, 2898/89 to 2901/89, 2903/89 to 2907/89, 2909/89 to 2913/89, 2917/89 to 29290/89, 2931/89, 2933/89 to 2935/89, 2937/89 to 2943/89, 2945/89 to 2950/89, 2952/89 to 2965/89, 2968/89 to 2925/89. All the above referred to references were consolidated with Land Reference Case No. 2863 of 1989 wherein the parties had led common evidence. The above numbered references arose out of publication of a Notification on May 27, 1982 which was issued under section 4(1) of the said Act. As common questions of fact and law are involved in these appeals, we propose to dispose of them by this common order.

#. A proposal was received by the State Government to acquire agricultural lands of village Chhapra-Likhi , Taluka Himatnagar District Sabarkantha for the public purpose of Guhai Jalagar Yojna. On scrutiny of the said proposal, the State Government was satisfied that the agricultural lands of village Chhapra-Likhi were likely to be needed for the said purpose. Accordingly Notification under section 4(1) of the said Act was issued which was published in Government gazette on May 27,1982. Therein the lands which were likely to be acquired were specified. The land owners were served with the notices under section 4 of the said Act and they had filed their objections against the proposed acquisition. After considering the said objections raised by the land owners, the Land Acquisition Officer had forwarded his report to the State Government as contemplated by section 5-A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands which were specified in the Notification published under section 4(1) of the Act were needed for public purpose of Guhai Jalagar Yojna. Therefore, declaration under section 6 of the Act was made which was published in the Official Gazette on September 21,1983. The interested persons were

thereafter served with the notices for determination of compensation. Having regard to the materials placed before him, the Land Acquisition Officer by his award dated March 26, 1984 offered compensation to the claimants at the rate of Rs. 160 per Are for irrigated lands, Rs. 111/- per Are for non irrigated lands and Re. 1/- per Are for Kharaba lands. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, they made applications in writing requiring the Land Acquisition Officer to refer the matter to the Court for the purpose of determination of compensation. Accordingly references were made to the District Court, Sabarkantha at Himatnagar which were numbered as detailed earlier. In the Reference applications, it was pleaded by the claimants that having regard to the fertility of the lands acquired as well as the prevailing prices of the lands situated near the acquired lands, they were entitled to compensation at the rate of Rs. 600/- per Are for irrigated lands and Rs. 370/- per Are for non irrigated lands. We may state that subsequently the claimants had amended the reference applications and claimed compensation at the rate of Rs. 1000/- per Are. The reference applications were contested by the State Government vide written statement exh.11. In the reply it was averred that the Land Acquisition Officer had determined the market value of the acquired lands after taking into consideration the fertility as well as the prevailing price of the lands situated nearby and therefore, the reference applications should be dismissed. Upon the rival assertions made by the parties, necessary issues for determination were raised by the Reference Court.

#. In order to substantiate the claim advanced in the reference applications, witness Manilal Dhulabhai was examined at exh.15. He was claimant in Land Acqu. Case No. 2863 of 1989 with which all the reference applications were consolidated and in which common evidence was led by the parties. The witness claimed before the court that the acquired land were highly fertile and the claimants were able to raise crops of high breed cotton, ground nut, castor seeds, green gram, maize etc. during monsoon; whereas during winter the claimants were able to take crops of wheat, raida, fenugreek etc. and in summer they were taking crops of maize, high breed millet, green gram etc. The witness stated before the court that water was available from the wells situated in the acquired lands. The witness claimed before the court that the yield of cotton crop per acre was 80 to 100 mounds and the price of the cotton

at the relevant time was Rs. 150 per mound. According to the witness, they were using manure, chemical fertilizers etc. and therefore, the claimants were able to get good yield of crops. The witness produced certified copy of the sale index with regard to the lands of village Vasdol, Ankola etc. He also produced the valuation report prepared by the experts. The another witness examined on behalf of the claimants was Mohmed Ibrahim Valimohmed exh.147. The witness in his deposition stated that he was a qualified valuer having the degree of B.E.(Civil) and he had prepared valuation reports of the well situated in the acquired lands and super structures standing on the acquired lands. He produced valuation reports at exh. 148 to 188. The claimants also produced previous award of the Reference court in respect of the lands of this very village at exh.217. The reference court on appreciation of evidence led by the parties held that though the sale indexes were produced by the claimants as well as by the acquiring authorities they were not relevant for the purpose of determining the market value of the acquired land, as neither the vendor nor the vendee nor the scribe of any of the deed was examined. The reference court deduced that the claimants had not led cogent and reliable evidence regarding the income realised from the sale of the agricultural produces and therefore, it was not possible to determine the market value of the acquired lands on yield basis. The reference court found that the previous award of the reference court in respect of the lands of this very village produced at exh. 217 was comparable as well as relevant for the purpose of determining the market value of the acquired lands. Therefore, the Reference Court relied upon the said previous award and has held that the claimants are entitled to compensation at the rate of Rs. 600/- per Are for irrigated lands as well as Rs. 370/- per Are for non irrigated lands by the impugned common award giving rise to the present appeals.

#. Learned Government Pleader submitted that no case was made out by the claimants for awarding enhanced compensation and therefore, the reference applications ought to have been dismissed by the reference court. It was pleaded that previous award of the reference court produced at exh.217 was neither comparable nor relevant for the purpose of ascertaining the market value of the acquired lands and therefore the appeals should be entertained. It was further submitted that the claimants did not lead cogent and reliable evidence to justify the award of compensation at the rate of Rs. 600/- per Are for irrigated lands and Rs. 370/- per Are for non

irrigated lands and therefore, the impugned common award should be set aside.

#. In our view there is no substance in any of the contentions urged on behalf of the appellants and the appeals cannot be entertained. We may state that by order dated February 19, 1999, the R & P was called for and this Court has received the same. We have carefully gone through the record of the case. It is well settled that the marketvalue of the acquired lands has to be ascertained with reference to the date of publication of the award u/s 4(1) of the Act. The best reliable method for the purpose of determining the market value of the acquired lands is to consider the sale instances relating to the acquired lands or similarly situated nearby lands. The sale instances should not only be in respect of same or similar lands but they must also be proximate in point of time. Though the claimants had adduced some evidence to prove the sale instances by production of index of sale register at exhs. 20 to 24, neither the vendor, nor the vendee nor the scribe of any deed was examined. Similarly present appellants had also produced the sale indexes but they had also not examined either the vendor, or the vendee or the scribe of the sale deed. When the sale transactions relating to the nearby lands in the vicinity of the acquired lands are considered, the features required to be present are:

(i) it must be within a reasonable time to
the date of Notification.

(ii) it must be a bonafide transaction.

(iii) it should be a sale of lands similar to

the acquired lands.

(iv) It must possess similar advantage.

These factors could have been presented before the court by examination of either the vendor or vendee or scribe of the sale deed. As neither the claimant nor the present appellants had examined any one to present the relevant features, we are of the opinion that no error was committed by the Reference Court in not placing the reliance on the sale indexes for the purpose of determining the market value of the acquired lands. So far as the yield method is concerned, we notice that only one claimant was examined on behalf of the claimants.

Said witness had generally stated about the crops which were being raised on the acquired lands but he had not given the particulars as to what was the yield of the crop raised by each claimant or what was the price of the crop at the relevant time. i.e. on the date of publication of the Notification under section 4(1) of the Act. Therefore, the Reference Court was justified in not ascertaining the market value of the acquired lands on yield basis. The evidence of witness Manilal Dhulabhai shows that the lands which were acquired were highly fertile and the claimants were raising different crops in different seasons. According to the witness each claimant was receiving income of Rs. 15,000/- to Rs. 20,000/- per year from the sale of agriculture produces. The evidence shows that village Chhapra-Likhi has got the facilities of educational institutions, co-operative societies, bus facilities etc. and state high way is at a distance of 2-3 kms. away from the village. This witness claimed in his examination that the boundaries of village Chhapra-Likhi and Sabli are just adjoining to each other. Under the circumstances the question which arises for the consideration of the court is whether the reference court was justified in placing reliance on previous award rendered in respect of the lands of this very village Likhi produced at exh.217 ? The previous award indicates that the agricultural lands of village Likhi were acquired for the public purpose of Guhai Jalagar Yojna. Therein Notification u/s 4(1) of the Act was published on May 25,1981. The reference court in that case by a common award dated July 23,1992 had determined the market value of the acquired lands of village Likhi at Rs. 600/per Are for irrigated lands and Rs. 370/per Are for non agricultural lands. In that case also, the agricultural lands of village Likhi were acquired. Though sufficient opportunity was given to the appellants no evidence was brought on record to establish that the acquired lands were not similar to the previously acquired lands of same village or that the acquired lands had certain disadvantages in comparison to the previously acquired lands of the same village. The award given by the reference court in previous case is atleast relevant, material and may be in the nature of admission with regard to value of land, on behalf of the State when either it is not challenged or has become final. If the lands involved in the previous award are comparable lands and in the reasonable proximity of the acquired lands, the rates found in the previous award would be reliable material to offer the basis to work upon for determination of the compensation in a later date. The previous award therefore, cannot be dismissed as inadmissible for the purpose of determination of

compensation. The judgment of the court in Land Acquisition Case determining the market value of the land in the vicinity of the acquired lands even though of another party, could be admitted in evidence as instance or one from which the market value of the land can be deduced or inferred. In the absence of any distinguishing features we are of the opinion that the reference court was justified in placing reliance on the previous award rendered in respect of the lands of this very village for ascertaining the market value of the acquired lands. It was neither brought to the notice of the reference court nor it is brought to the notice of this court that the previous award rendered in respect of lands of this very village was either set aside or modified in any manner by the appellate court. Therefore, determination of compensation on the basis of previous award exh. 217 cannot be said to be erroneous at all so as to warrant interference of the court in the present appeals. The claimants had also produced another previous award of the court at exh. 18 which was rendered in relation to the lands of village Sabli. The reference court found that the acquired lands were similar to the lands of village Sabli which were acquired earlier. There in also Notification under section 4(1) of the Act was published on May 27, 1982 and the lands were acquired for the purpose of Guhai Jalagar Yojna. We may state that normally a claimant would be entitled to reasonable rise in the price of land if there is time lag between the Notifications issued under section 4(1) of the Act. In exh. 217 the Notification under section 4(1) of the Act was published on May 25, 1981 whereas in the present case the notification under section 4(1) of the Act was published on May 25, 1981 and therefore, in the normal circumstances, the claimants would be entitled to reasonable rise in price of lands because of gap of time between issuance of two Notifications. However, the reference court has not awarded any amount of compensation to the claimants on this count. Having regard to the facts and circumstances of the case we are of the opinion that the compensation awarded to the claimants cannot be regarded as excessive and therefore,, the appeals cannot be entertained.

#. For the foregoing reasons all the appeals fail and are dismissed summarily.

Copy of this judgment be kept in all matters.

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